UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 18

USF HOLLAND LLC **Employer** **and** **DIANE J. DAMASK, an Individual** **Petitioner** **and** **TEAMSTERS "GENERAL" UNION LOCAL NO. 200, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS** **Union**	**Case 18-RD-239688**

DECISION AND ORDER

The Employer, USF Holland LLC, provides less-than-truckload (LTL) freight services throughout the central and southern United States, including through a terminal located in Milwaukee, Wisconsin. The Petitioner in this case, Diane J. Damask, is a long-time clerical employee at the Employer's Milwaukee terminal. On April 16, 2019, the Petitioner filed a petition with the National Labor Relations Board, seeking to decertify the Union, Teamsters "General" Union Local No. 200, affiliated with the International Brotherhood of Teamsters, from representing the clerical employees at the Milwaukee terminal. The sole issue by this petition is whether a relatively small, single-location clerical unit has been merged into a much larger nationwide, multi-employer bargaining unit and whether, as a result, the petitioned for unit is not appropriate. The Employer and the Union jointly contend that the petition should be dismissed, as the clerical employees have been merged into an existing nationwide, multi-employer bargaining unit composed of over 20,000 employees. The Petitioner contends that the merged unit is inappropriate, as it does not sufficiently effectuate the clerical employees' rights under Section 7 of the Act.

A hearing officer of the Board held a hearing in this matter on April 26, 2019. The Employer and Petitioner thereafter submitted briefs on May 3, 2019. As explained below, based on the record evidence and relevant Board law, I find that the clerical employees' bargaining unit merged with the parties' existing nationwide, multi-employer bargaining unit, and therefore, the petition shall be dismissed.

STATEMENT OF FACTS

The relevant facts in this matter are brief and largely undisputed.

Employer's Operation and Bargaining History

As mentioned above, the Employer in this case provides LTL freight services at over fifty terminals located throughout the central and southern United States. The operations at these terminals are divided into roughly four segments: over-the-road drivers, who deliver freight between the Employer's various terminals; city drivers, who deliver and pick up freight from local customers; dock workers and mechanics; and clerical employees, who coordinate deliveries and handle paperwork. The Employer employs upwards of 8,000 employees nationwide. The Milwaukee terminal at issue in this case employs approximately 160 workers, the vast majority of which are drivers, dock workers, or mechanics. At the time of the hearing, the terminal employed nine clerical workers.

The Employer has had a bargaining relationship with various Teamsters locals for several decades. According to the Employer, approximately ninety-five percent of its employees are currently represented by the Teamsters, including all of its drivers, mechanics, and dock workers. The Teamsters represent some, but not all, of the Employer's clerical employees.

The Employer is a party to the National Master Freight Agreement (NMFA), which is a nationwide, multi-employer agreement. The NMFA has existed in some form since 1964. This agreement is negotiated at a national level by the Teamsters National Freight Industry Negotiating Committee and various representatives of the signatory employers, including the instant Employer.[1] The existing NMFA was set to expire by its terms on March 13, 2013. It has, however, been extended by the parties through subsequent agreements to expire on March 31, 2019.

The NMFA contains several provisions relevant to the instant matter. The agreement states in Article 1 that all signatory employers and local Teamsters unions are bound by the agreement. Article 2, Section 4 of the NMFA establishes "[t]he employees, Unions, Employers and Associations covered under this Master Agreement and the various Supplements thereto shall constitute one (1) bargaining unit and contract." Article 31 of the NMFA, which is titled "Multi-Employer, Multi-Union Unit," echoes this position, stating that "[t]he parties agree to become a part of the multi-employer, multi-union bargaining unit . . ., and to be bound by the interpretations and enforcement of this [NMFA] and Supplements thereto." Finally, Article 2 of the NMFA explicitly acknowledges the existence of supplemental agreements and clearly states that "all Supplemental Agreements are subject to and controlled by the terms of this Master Agreement."

[1] The signatory employers previously utilized an outside negotiating group named Trucking Management, Inc. During the current negotiations, however, the signatory employers have chosen to negotiate directly with the Teamsters National Freight Industrial Committee. In addition to the Employer, two other companies, New Penn Motor Express, LLC and YRC Inc. d/b/a YRC Freight, are signatory to the NMFA. The three signatory employers combined employ well over 20,000 employees who work under the agreement.

As alluded to in the NMFA, the Employer and the various Teamsters locals operate under regional supplements to the NMFA. In relevant part, the Milwaukee terminal at issue is covered by the Central Region Local Cartage Supplemental Agreement (Supplement or Central Region Supplement). The Supplement, by its terms, incorporates the NMFA in its preamble and explicitly provides that the NMFA supersedes its terms.

Finally, the parties regularly negotiate addendums to these agreements for particular facilities and groups of employees. As will be discussed in greater detail below, the Employer and Union negotiated a specific clerical addendum that covers the Milwaukee terminal's clerical employees. This agreement, by its terms, binds the parties to the terms of both the NMFA and the Supplement. Although not explicitly stated in the Local Addendum, the parties understood that, in cases of conflict, the agreement would be ultimately governed by the terms of the NMFA and the Supplement.

Milwaukee Unit: Recognition and Merger

The Union filed a petition to represent the Milwaukee clerical unit at issue here in early 2018. The petition sought a stand-alone unit, and both the Union and employee witnesses testified that there were no representations made about any intention to incorporate the clerical unit into a nationwide bargaining unit at this time. During this organizing process, the Union representatives represented to employees that they could, if they so choose, decertify the Union within a year and a day of the Union becoming certified. The petition was later withdrawn prior to any election, as the parties subsequently reached a voluntary recognition agreement regarding the Milwaukee clericals effective February 9, 2019.

During the parties' first negotiation session and throughout negotiations for an initial collective-bargaining agreement, both the Union and Employer proposed that the parties' agreement incorporate both the NMFA and the Supplement. According to witnesses from both sides, this was never an issue that was in dispute during negotiations; in other words, the NMFA and the Supplement formed the bedrock upon which the parties negotiated the specific addendum for this unit. After approximately five negotiating sessions, the parties reached an overall tentative agreement in July 2019.

After the tentative agreement was reached, the Union took it before membership for a vote on July 14, 2019. This meeting was only open to members of the Union, six of whom attended the meeting. At this meeting, the Union representatives went through the provisions of the Local Addendum one-by-one, including the provision incorporating the NMFA and Central Region Supplement. Although somewhat unclear in the record, at least one Union witness also testified that copies of the NMFA and Central Region Supplement were made available to employees who were present. While going through the Local Addendum, the representatives explained that voting for the agreement would make them "part" of the NMFA and the Supplement. They did not, however, explicitly explain to membership the consequences of potentially being incorporated into a nationwide, multi-employer unit and the obstacles that this

would place in front of a potential decertification effort. After the presentation, the members present voted unanimously in favor of the contract.[2]

The respective Union committees and the Employer (along with the other employers covered by the NMFA) are currently in negotiations for a successor NMFA and Central Region Supplement. The parties have reached overall tentative agreements and according to the record, the ratification process was scheduled to conclude on May 3, 2019. Employees in the clerical unit at issue here are allowed to participate in this vote. Consistent with the established past practice, if a majority of all employees across the nationwide, multi-employer unit vote in favor of the agreements, they will be ratified.

LEGAL PRINCIPLES

As mentioned above, the sole issue presented in this case is whether the unit of clerical workers described in the petition has been merged into a nationwide, multi-employer unit. The Board has long held that unions and employers are allowed, through mutual agreement, to merge multiple bargaining units into a single, larger unit. *Albertson's Inc.*, 307 NLRB 338 (1992); *Wisconsin Bell*, 283 NLRB 1165 (1987). Through its merger doctrine, the Board seeks to balance the competing interests of employee self-determination, enshrined in Section 7 of the Act, with the statutory mandate to maintain industrial stability. *Gibbs & Cox,* 280 NLRB 953, 954–55 (1986). In considering whether such a merger has been effectuated, the Board considers the relevant recognition language, the parties' conduct, bargaining history, and the relative duration of the units in question. *See, e.g., Albertson's Inc.*, 307 NLRB at 338–39; *West Lawrence Care Center, Inc.*, 305 NLRB 212, 216-17 (1991); *Duke Power Co.,* 191 NLRB 308, 312 (1971). The Board has further held that where an effective merger has taken place, the merger "precludes petitions for otherwise appropriate units that have been merged into the certified or recognized units." *West Lawrence Care Center, Inc.,* 305 NLRB at 216.

APPLICATION

Applying the aforementioned Board precedent to the case at hand, I find that the unit of clerical employees has been merged into the larger nationwide, multi-employer bargaining unit and that as such, the petition should be dismissed. First, the relevant recognition provisions strongly support the existence of a merged unit. Although the February 2018 voluntary recognition agreement established a single-facility unit, this agreement was superseded by the recognition provision in the NMFA. As discussed above, the language in NMFA unequivocally establishes a nationwide, multi-employer unit. Moreover, the Employer and Union's intent to merge the clerical unit into this nationwide, multi-employer unit is evidenced by their negotiated

[2] The record is clear that six employees were present at this meeting and voted in favor of the Local Addendum. The Union testified that the Local Addendum was passed by a majority and the Petitioner's brief states this is undisputed; however, the record is unclear whether these six employees constituted a majority of the overall unit at the time of this vote, as there is no record evidence regarding the size of the unit at that time.

Local Addendum, which explicitly adopted the terms of the NMFA and the Supplement.[3] The parties' clear intent to fold the local unit into the nationwide, multi-employer unit is further demonstrated by the expiration date of the Local Addendum, which expired on March 31, 2019 (the same date as the NMFA and Supplement). In similar circumstances, the Board has found that the parties' contractual language supersedes the initial recognition provisions. *See, e.g., Albertson's Inc.,* 307 NLRB at 338–39. As such, this factor weighs in favor of finding a merged unit.

Second, the parties' overall course of conduct and bargaining history further supports a finding of merger. In this regard, the Board's decisions in *White-Westinghouse Corp.,* 229 NLRB 667 (1977) and *Westinghouse Electric Corp.*, 227 NLRB 1932 (1977), are instructive. In these cases, the bargaining units in question had initially been certified as numerous individual units. The Board nonetheless found that, through their course of conduct, the parties had established merged units. In finding these merged units, the Board noted the parties had established national agreements that dictated many, though not all, terms and conditions of employment. The parties negotiated these agreements at a national level, through a joint union negotiating committee. These agreements, in turn, were supplemented by local addendums that addressed certain local issues and were negotiated at a local level. The Board, in finding a merged unit, emphasized that the locals had ceded substantial bargaining rights to the national committee, that the employer had consistently dealt with this joint committee as a bargaining representative for the locals, and that the national agreement ultimately superseded any local addendums.

These factors are all present in the instant matter. By the terms of their agreement, the unit in question ceded authority to the Teamsters National Freight Industry Negotiating Committee. The Employer and this committee have a decades-long history of negotiating in this fashion (although admittedly not for the unit in question). Finally, the agreements state that the NMFA governs in the case of any conflict. Thus, as in the *Westinghouse* cases cited above, the presence of a Local Addendum does not serve to otherwise rebut the presence of a merged unit.

This conclusion is further bolstered by the lack of any contradictory conduct on behalf of the parties after the purported merger. In *West Lawrence Care Center,* 305 NLRB 212 (1991), for example, the Board found that despite the parties' nominal creation of a multi-employer merged unit, the units had not been merged. Citing "unusual circumstances," the Board found dispositive that, among other factors, the parties had *not* engaged in truly group bargaining, and instead had continued to negotiate on an individual basis, both in practice and by the terms of their agreements. *Id.* at 215–16. Here, by contrast, the terms of the agreement unequivocally establish a merged unit, and the parties clearly negotiated under this understanding. Further, although the unit at issue has previously not had the opportunity to do so, Union representatives stated on the record that the soon-to-expire National Agreement would be ratified by a majority

[3] Although not necessary to find an effective merger, the evidence demonstrates the union members were presented with the Local Addendum, which clearly incorporated the terms of the NMFA and Supplement, and voted unanimously to approve the Local Addendum; arguably a form of self-determination. The NMFA and Supplement were available at the ratification vote but it is unclear if employees were informed of such or provided copies prior to the vote.

vote of all employees in the nationwide, multi-employer unit. This vote will include the employees in the unit in question.

Finally, I find that the duration of the relevant bargaining relationships does not defeat the finding of a merged unit. In examining this factor, the Board looks at the duration of the bargaining relationship in the merged unit and compares it to the duration of the bargaining relationship in the single-facility unit. *Compare Albertson's Inc.*, 307 NLRB at 339 (finding merged unit where single facility existed for four months while merged unit existed for 10 months), *and Wisconsin Bell,* 283 NLRB 1165 (1987) (merged unit found where single facility unit "existed for only 11 days prior to merger"), *with West Lawrence Care Center,* 305 NLRB at 217 (finding no merger where single facility unit existed for 15 years, in contrast to less than one year as merged unit), *and Duke Power Co.,* 191 NLRB 308, 309–10, 312 (1971) (no merger found where merged unit existed an "insufficient" amount of time prior to decertification petitions being filed, as merged unit existed less than two years in all units). Based on the Board's more recent case law,[4] I find that the duration of the respective bargaining relationships supports a finding of a merged unit. The single facility clerical unit existed for only five months; by contrast, it was part of the decades-old merged unit for eight months. As the merged unit has been in effect longer, I find that the duration of the respective bargaining relationships supports finding the merged unit the appropriate unit.

The contrary arguments raised by Petitioner are without merit. First, Petitioner argues that, under traditional community of interest factors, the clerical unit represents an appropriate unit and therefore, the election should be allowed to proceed. The Board, however, has made clear that traditional community of interest principles do not apply to decertification petitions and that the only appropriate unit for a decertification petition is the currently recognized unit. *See, e.g., Campbell Soup Co.*, 111 NLRB 234, 235–36 (1955); *Gold Kist, Inc.*, 309 NLRB 1, 1–2 (1992) (noting that traditional community of interest factors "are not relevant in a decertification case where the evidence shows a long history of merged units up to and including the most recent collective-bargaining agreement") Second, the Petitioner argues that the Union did not inform employees of the practical effects of the merger at the time that the unit voted to ratify the Local Addendum. There is no evidence, however, that the Union representatives ever misled employees; further, there is no requirement under Board law that employees even be allowed to vote on a merged unit. *See, e.g., Albertson's Inc.,* 307 NLRB at 338–39 (merger found without evidence that employees allowed to vote on contract merging unit); *Wisconsin Bell,* 283 NLRB at 1165–66 (same). By providing the opportunity to vote, and generally informing employees that they would be "part" of the NMFA, the Union satisfied any requirements under the Board's current merger doctrine. Third, Petitioner argues that the Board's current merger doctrine gives

[4] The Board's rejection of the purported mergers in *Duke Power Co.*, 191 NLRB at 312, appears, in my view, to conflict with the more recent holding of an effective merger in *Albertson's Inc.*, 307 NLRB at 339. Although somewhat unclear in the Board's decision, it appears that the merged unit in *Duke Power* had been in existence at least as long as the single facility units at issue, and that in any event it had been in effect longer than ten months (the length of time of the merged unit in *Albertson's*). The Board did not distinguish or otherwise discuss *Duke Power Co.* in *Albertson's Inc*. As *Albertson's Inc.* represents the more recent statement of Board law, however, I find it to be more persuasive authority on the question at issue.

insufficient weight to employees' rights to self-determination under Sections 7 and 9 of the Act. I am, however, bound to follow current Board law and as discussed above, this law dictates the finding of a merged unit.[5]

In sum, applying the relevant principles under extent case law to the record evidence, I find that the clerical unit has been merged into the nationwide bargaining unit and that the petition should therefore be dismissed.

CONCLUSION

In determining whether a merger has taken place, I have carefully weighed the parties' arguments and the record evidence. Applying existing Board precedent dictates a finding that the clerical unit has merged into the nationwide, multi-employer unit. In making this finding, I am not unsympathetic to the concerns raised by the Petitioner with regard to employees' Section 7 rights and the impact that a finding of merger has on the practical ability of the petitioned for clerical unit to choose not to be represented by the Union. The Board, however, has established through its existing merger doctrine that principles of industrial stability outweigh these concerns in the circumstances of this case. As such, the petition is properly dismissed.

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[6]

3. The Union is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

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[5] There is a long history of Board law supporting the merger doctrine. There is good reason for such a long-standing history, which is explained best by the Board itself but stated simply, the basis for the merger doctrine is the industrial stability that results from the exclusive- bargaining representative and employer agreeing to merge multiple units into a single unit. The Board has found exceptions in the past to the appropriate unit under the merger doctrine, none of which I've found on point for this particular case. The law currently does not require that employees in the affected unit(s) be notified of the merger, nor any requirement that employees choose to be part of the merged unit via self-determination election or otherwise. While not currently the law, there may be a case, such as one where the change in scope of the affected unit(s) is so great that the Board would require more to balance the industrial stability created under the merger doctrine with the Section 7 rights of employees to freely choose representation. However, such consideration is the Board's authority.

[6] The Employer, USF Holland LLC, a Delaware limited liability corporation, with an office and place of business in Milwaukee, Wisconsin, is engaged in the business of providing intrastate and interstate transportation of freight. During the past twelve months, a representative period, the Employer, in conducting its business operations, derived gross revenues in excess of $50,000 for the transportation of freight from the State of Wisconsin directly to points outside the State of Wisconsin.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

ORDER

It is hereby ordered that the petition is dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by May 21, 2019.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: May 7, 2019

/s/ Jennifer A. Hadsall

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